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11  
12 **UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

13  
14 CLINTON ROONEY individually and on  
behalf of all others similarly situated,

15 *Plaintiff,*

16 v.

17 RITE AID HDQTRS. CORP., a Delaware  
18 Corporation,

19 *Defendant.*

Case No. 3:14-cv-1249-JAH-NLS

**PLAINTIFF'S FIRST  
AMENDED CLASS ACTION  
COMPLAINT AND DEMAND  
FOR JURY TRIAL**

Judge John A. Houston

20  
21 **INTRODUCTION**

22  
23 1. Clinton Rooney ("Plaintiff"), individually, and on behalf of all others  
24 similarly situated, brings this Complaint for damages, injunctive relief, and any  
25 other available legal or equitable remedies, resulting from the illegal actions of Rite  
26 Aid Hdqtrs. Corp. ("Rite Aid" or "Defendant") in negligently and/or intentionally  
27 contacting Plaintiff on Plaintiff's cellular telephone, in violation of the Telephone  
28

1 Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), thereby invading Plaintiff’s  
2 privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his  
3 own acts and experiences, and, as to all other matters, upon information ad belief,  
4 including investigation conducted by his attorneys.

5         2. The TCPA was designed to prevent calls like the ones described within  
6 this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous  
7 consumer complaints about abuses of telephone technology—for example,  
8 computerized calls dispatched to private homes—prompted Congress to pass the  
9 TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

10         3. In enacting the TCPA, Congress intended to give consumers as choice  
11 as to how creditors and telemarketers may call them, and made specific findings that  
12 “[t]echnologies that might allow consumers to avoid receiving such calls are not  
13 universally available, are costly, are unlikely to be enforced, or place an inordinate  
14 burden on the consumer.” TCPA, Pub. L. No. 102-243, § 11. Toward this end,  
15 Congress found that “[b]anning such automated or prerecorded telephone calls to  
16 the home, except when the receiving party consents to receiving the call or when  
17 such calls are necessary in an emergency situation affecting the health and safety of  
18 the consumer, is the only effective means of protecting telephone consumers from  
19 this nuisance and privacy invasion.” *Id.* at § 12; *see also Martin v. Leading Edge*  
20 *Recovery Solutions, LLC*, No. 11-cv-5886, 2012 WL 3292838, at \*4 (N.D. Ill. Aug.  
21 10, 2012) (citing Congressional findings on TCPA’s purposes).

22         4. Congress also specifically found that “the evidence presented to the  
23 Congress indicates that automated or prerecorded calls are a nuisance and an  
24 invasion of privacy . . .” Pub. L. No. 102-243 at §§ 12 – 13. *See also, Mims*, 132 S.  
25 Ct. at 744.

## 26 JURISDICTION AND VENUE

27         5. This Court has federal question jurisdiction because this case arises out  
28

1 of violation of federal law. 47 U.S.C. § 227(b); *Mims*, 132 S. Ct. 740.

2       6. Venue is proper in the United States District Court for the Southern  
3 District of California pursuant to 18 U.S.C. § 1391(b)(2) because the harm to  
4 Plaintiff occurred in this district, as Plaintiff received the text message(s) at issue  
5 while in the County of San Diego, and Defendant is subject to personal jurisdiction  
6 in the County of San Diego, State of California because it conducts business here.

### 7 **PARTIES**

8       7. Plaintiff is, and at all times mentioned herein was, a “person” as  
9 defined by 47 U.S.C. § 153(1).

10       8. Defendant is a Delaware corporation with its headquarters and principal  
11 place of business in Pennsylvania. Defendant is, and at all times mentioned herein  
12 was, a Delaware corporation and is a “person,” as defined by 47 U.S.C. § 153(10).

13       9. Defendant provides retail services to hundreds of thousands of  
14 consumers. Plaintiff alleges that at all times relevant herein, Defendant conducted  
15 business in the State of California and in the County of San Diego, and within this  
16 judicial district.

### 17 **FACTUAL ALLEGATIONS**

18       10. Plaintiff is, and at all times mentioned herein was, a “person” as that  
19 term is used throughout 47 U.S.C. § 227.

20       11. Defendant is, and at all times mentioned herein was, a Delaware  
21 corporation and a “person,” as that term is used throughout 47 U.S.C. § 227.

22       12. At all times relevant, Defendant conducted business in the State of  
23 California and in the County of San Diego within this judicial district.

24       13. At no time did Plaintiff provide Plaintiff’s cellular phone number to  
25 Defendant through any medium.

26       14. On or about February 24, 2013, at approximately 9:26 A.M. (PST),  
27 Defendant, Rite Aid, sent an unsolicited impersonal and form SPAM text message  
28

1 to Plaintiff. This text message (hereinafter, the “SPAM”) read:

2 “Rite Aid Alerts: to subscribe reply YES. Max 30mgs/mo.  
3 [www.riteaid.com/contact\\_us/](http://www.riteaid.com/contact_us/) for info. Txt HELP for Help, STOP to stop.  
4 Msg&Data rates may apply.

5 15. Plaintiff was unaware that Rite Aid would send him the unsolicited  
6 SPAM text message described in paragraph 14.

7 16. Through this conduct, Defendant contacted Plaintiff on Plaintiff’s  
8 cellular telephone regarding an unsolicited service via an “automatic telephone  
9 dialing system,” (“ATDS”) as defined by 47 U.S.C. § 227(a)(1)(A) and prohibited  
10 by 47 U.S.C. § 227(b)(1)(A)(iii).

11 17. This ATDS has the capacity to store or produce telephone numbers to  
12 be called, using a random or sequential number generator.

13 18. The telephone number Defendant called was assigned to a cellular  
14 telephone service for which Plaintiff incurs a charge for incoming calls, pursuant to  
15 47 U.S.C. § 227(b)(1)(A)(iii).

16 19. These telephone calls constituted calls that were not for emergency  
17 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

18 20. Plaintiff did not provide Defendant or its agent prior express consent to  
19 receive calls from Rite Aid, including unsolicited calls, to his cellular telephone,  
20 pursuant to 47 U.S.C. § 227(b)(1)(A).

21 21. The telephone call by Defendant, or its agent, described in Paragraph  
22 14 of this Complaint, violated 47 U.S.C. § 227(b)(1)(A)(iii).

23 22. On February 26, 2013, at 9:06 A.M., Plaintiff requested that Rite Aid  
24 cease sending Plaintiff SPAM text messages, by replying to the above SPAM text  
25 and sending the word “STOP.”

26 23. On February 26, 2013, also at 9:06 A.M., Rite Aid sent Plaintiff the  
27 following unsolicited and impersonal form text message:

28 “You are unsubscribed from RiteAid Prescription alerts. Visit  
[www.riteaid.com/contact\\_us/](http://www.riteaid.com/contact_us/) to rejoin.”

1           24. Through this conduct, Defendant contacted Plaintiff on Plaintiff's  
2 cellular telephone regarding an unsolicited service via an "automatic telephone  
3 dialing system," ("ATDS") as defined by 47 U.S.C. § 227(a)(1)(A) and prohibited  
4 by 47 U.S.C. § 227(b)(1)(A)(iii).

5           25. This ATDS has the capacity to store or produce telephone numbers to  
6 be called, using a random or sequential number generator.

7           26. The telephone number Defendant called was assigned to a cellular  
8 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to  
9 47 U.S.C. § 227(b)(1)(A)(iii).

10          27. These telephone calls constituted calls that were not for emergency  
11 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

12          28. On February 28, 2013 at 9:52 A.M. (despite Plaintiff expressly  
13 requesting such SPAM text messages stop) Rite Aid *again* sent Plaintiff an  
14 unsolicited and impersonal form SPAM text message. Like the first SPAM text  
15 message, this second SPAM text message read:

16          29. Plaintiff was unaware that Rite Aid would send him the unsolicited  
17 SPAM text message described in paragraph 28.

18          30. Through this conduct, Defendant contacted Plaintiff on Plaintiff's  
19 cellular telephone regarding an unsolicited service via an "automatic telephone  
20 dialing system" ("ATDS") as defined by 47 U.S.C. § 227(a)(1)(A) and prohibited by  
21 47 U.S.C. § 227(b)(1)(A)(iii).

22          31. This ATDS has the capacity to store or produce telephone numbers to  
23 be called, using a random or sequential number generator.

24          32. The telephone number Defendant called was assigned to a cellular  
25 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to  
26 47 U.S.C. § 227(b)(1)(A)(iii).

27          33. These telephone calls constituted calls that were not for emergency  
28

1 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

2 34. On December 11, 2013, at 11:28 A.M., Plaintiff replied to this second  
3 SPAM text message as follows: “Stop.”

4 35. Despite informing Defendant to stop sending SPAM text messages,  
5 Plaintiff could not get the unsolicited SPAM text messages to stop and again on  
6 December 11, 2013, at 11:35 A.M., Rite Aid *again* sent Plaintiff an unsolicited and  
7 impersonal form text, which read as follows:

8 “You are unsubscribed from RiteAid Prescription alerts. Visit  
9 [www.riteaid.com/contact\\_us](http://www.riteaid.com/contact_us) to rejoin.”

10 36. Through this conduct, Defendant contacted Plaintiff on Plaintiff’s  
11 cellular telephone regarding an unsolicited service via an “automatic telephone  
12 dialing system,” (“ATDS”) as defined by 47 U.S.C. § 227(a)(1)(A) and prohibited  
13 by 47 U.S.C. § 227(b)(1)(A)(iii).

14 37. This ATDS has the capacity to store or produce telephone numbers to  
15 be called, using a random or sequential number generator.

16 38. The telephone number Defendant called was assigned to a cellular  
17 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to  
18 47 U.S.C. § 227(b)(1)(A)(iii).

19 39. These telephone calls constituted calls that were not for emergency  
20 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

### 21 **CLASS ACTION ALLEGATIONS**

22 40. Plaintiff brings this action on behalf of himself and on behalf of all  
23 others similarly situated (“the Class”).

24 41. Plaintiff represents, and is a member of the Class, consisting of: “all  
25 persons within the United States who received a text message substantially similar  
26 to or identical to the text messages described above in this Complaint from  
27 Defendant, which message by Defendant or its agents was not made for emergency  
28

1 purposes, within the four years prior to the filing of this Complaint.”

2 42. Defendant and its employees or agents are excluded from the Class.  
3 Plaintiff does not know the number of members in the Class, but believes the Class  
4 members number in the tens of thousands, if not more. Thus, this matter should be  
5 certified as a Class action to assist in the expeditious litigation of this matter.

6 43. Plaintiff and members of the Class were harmed by the acts of  
7 Defendant in at least the following ways: Defendant, either directly or through its  
8 agents, illegally contacted Plaintiff and the Class members via their cellular  
9 telephones by using an unsolicited and impersonal form SPAM text messages,  
10 thereby causing Plaintiff and the Class members to incur certain cellular telephone  
11 charges or reduce cellular telephone time for which Plaintiff and the Class members  
12 previously paid, and invading the privacy of said Plaintiff and the Class members.  
13 Plaintiff and the Class members were damaged thereby.

14 44. This suit seeks only damages and injunctive relief for recovery of  
15 economic injury on behalf of the Class, and it expressly is not intended to request  
16 any recovery for personal injury and claims related thereto. Plaintiff reserves the  
17 right to modify or expand the Class definition to seek recovery on behalf of  
18 additional persons as warranted as facts are learned in further investigation and  
19 discovery.

20 45. The joinder of the Class members is impractical and the disposition of  
21 their claims in the Class action will provide substantial benefits both to the parties  
22 and to the Court. The Class can be identified through Defendant’s records or  
23 Defendant’s agents’ records.

24 46. There is a well-defined community of interest in the questions of law  
25 and fact involved affecting the parties to be represented. The questions of law and  
26 fact common to the Class predominate over questions which may affect individual  
27 Class members, including, but not limited to, the following:



- (a) Whether, within the four years prior to the filing of this Complaint, Defendant or its agents sent any unsolicited text message(s) to the Class (other than a message made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic dialing and/or SMS texting system to any telephone number assigned to a cellular phone service;
- (b) Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and
- (c) Whether Defendant and its agents should be enjoined from engaging in such conduct in the future;
- (d) Whether the Plaintiff and the Class are entitled to any other relief.

47. As a person who received at least one unsolicited SPAM text message without his prior express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class. Plaintiff and the members of the Class have all suffered irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendant will likely continue such illegal conduct. Because of the size of the individual Class members' claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein.

48. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

49. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal and California law. The interest of Class members in individually controlling the prosecution of separate claims is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

50. Defendant has acted on grounds generally applicable to the Class,



1 thereby making appropriate final injunctive relief and corresponding declaratory  
2 relief with respect to the Class as a whole.

3 **FIRST CAUSE OF ACTION**  
4 **NEGLIGENT VIOLATIONS OF THE**  
5 **TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227**

6 51. Plaintiff incorporates by reference all of the above paragraphs of this  
7 Complaint as though fully set forth herein.

8 52. The foregoing acts and omissions of Defendant constitute numerous  
9 and multiple negligent violations of the TCPA, including but not limited to each and  
10 every one of the above-cited provisions of 47 U.S.C. § 227.

11 53. As a result of Defendant's negligent violations of 47 U.S.C. § 227,  
12 Plaintiff and the Class are entitled to an award of \$500.00 in statutory damages, for  
13 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

14 54. Plaintiff and the Class are also entitled to and seek injunctive relief  
15 prohibiting such conduct in the future.

16 **SECOND CAUSE OF ACTION**  
17 **KNOWING AND/OR WILLFUL VIOLATIONS OF**  
18 **THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227**

19 55. Plaintiff incorporates by reference all of the above paragraphs of this  
20 Complaint as though fully stated herein.

21 56. The foregoing acts and omissions of Defendant constitute numerous  
22 and multiple knowing and/or willful violations of the TCPA, including but not  
23 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227.

24 57. As a result of Defendant's knowing and/or willful violations of 47  
25 U.S.C. § 227, Plaintiff and the Class are entitled to an award of \$1,500.00 in  
26 statutory damages, for each and every violation, pursuant to 47 U.S.C.  
27 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

28 58. Plaintiff and the Class are also entitled to and seek injunctive relief  
prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the Class members the following relief against Defendant:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF THE TCPA, 47 U.S.C. § 227**

59. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1) Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

60. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

61. Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA, 47 U.S.C. § 227**

62. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

63. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

64. Any other relief the Court may deem just and proper.

**TRIAL BY JURY**

Pursuant to the Seventh Amendment of the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

1 Dated: October 14, 2014

Respectfully Submitted,

2 **CLINTON ROONEY** individually and on  
3 behalf of all others similarly situated,

4  
5 By: s/ J. Dominick Larry  
*Counsel for Plaintiff*

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23 *Counsel for Plaintiff and the Putative Class*  
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25  
26  
27  
28

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on October 14, 2014, I served the above and foregoing by causing a true and accurate copy of such paper to be filed and served on all counsel of record via the Court's CM/ECF electronic filing system.

s/ J. Dominick Larry